

~~ESCROW DEPOSIT AGREEMENT~~

~~Non-Critical Repairs~~

~~(Section Pursuant to Section 223(f) of the National Housing Act)~~

THIS AGREEMENT made this _____ day of _____, 20____, by and between _____, a
_____(hereinafter called "Mortgagor"), and _____, a(n) _____ (hereinafter called "Depository"
or "Mortgagee");

~~WITNESSETH:~~

WHEREAS, the Mortgagor is the owner of a _____ project in the City of _____, County of
_____, State of _____, identified as _____, FHA Project No. _____ (the "Project").

_____~~WHEREAS, the Project is being purchased or refinanced with the proceeds of a mortgage loan (the "Loan") in the principal amount of \$ _____ from the Mortgagee to the Mortgagor. The obligation of the Mortgagor to repay the Loan is evidenced by a certain mortgage note or deed of trust note (the "Mortgage Note") dated of even date herewith executed by Mortgagor in favor of Mortgagee, which Mortgage Note is secured by a certain mortgage or deed of trust (the "Mortgage") dated of even date herewith from the Mortgagor to the Mortgagee.~~

_____~~WHEREAS, the Secretary of Housing and Urban Development ("HUD") has issued its Commitment to Insure dated _____, 20____, as amended (the "Commitment"), pursuant to which HUD has agreed to insure the Loan.~~

_____~~WHEREAS, pursuant to Special Condition _____ of the Commitment, the Mortgagor is required to perform certain repairs and improvements as set forth on Exhibit A attached hereto (the "Repairs").~~

_____~~WHEREAS, in order to induce the Mortgagee to disburse the proceeds of the Loan and in order to induce HUD to insure the Loan in its entirety prior to completion of the Repairs, the Mortgagor desires to provide security for the completion of the Repairs.~~

_____~~NOW, THEREFORE, for and in consideration of the premises hereinabove set forth, the parties hereto agree as follows:~~

1. _____~~The Mortgagor covenants and agrees to complete the Repairs enumerated in said Commitment and as more particularly set forth on Exhibit A attached hereto within _____ (_____) months after endorsement of the Mortgage Note for mortgage insurance ("Endorsement"). The Mortgagor covenants and agrees that the Repairs shall be performed and completed free and clear of all liens. The Mortgagor further agrees to pay for all work and materials necessary for the completion of the Repairs.~~

2. _____~~The Mortgagor herewith deposits with the Depository the sum of _____ and _____/100 Dollars (\$ _____) [[120% amount or lesser multiple if specified in Commitment]] (hereinafter called the "Repair Escrow"), to guarantee compliance by the Mortgagor with~~

~~the terms of this Agreement. The said deposit is in the form of: (check one of the following)~~

~~(a) ☐ cash which has been withheld from Loan proceeds in an amount equal to _____ percent of the estimated cost of the Repairs as determined by HUD, or~~

~~(b) ☐ cash in the amount of _____ Dollars (\$) which has been withheld from Loan proceeds and which equals 100 percent of the estimated cost of the Repairs as determined by HUD and an irrevocable letter of credit in the amount of _____ Dollars (\$) which equals _____ percent of the estimated cost of Repairs as determined by HUD.~~

~~3. The Repair Escrow will be disbursed at the direction of HUD from time to time as the Repairs are satisfactorily completed as follows:~~

~~(a) Subject to HUD approval, the Depository may release funds from the Repair Escrow in proportion to the cost of Repairs completed (based upon the budgeted costs for such repairs as set forth on Exhibit A), less a 10 percent holdback until all work is completed and found acceptable by HUD. Provided, that at least \$ _____ **[[amount of Repair Escrow in excess of estimated cost of repairs; ordinarily additional 20%]]** of the Repair Escrow must be retained by the Depository until all the Repairs are completed and found acceptable by HUD.~~

~~(b) It is further understood and agreed that the Depository will hold and disburse the Repair Escrow at the sole direction of HUD; and the Mortgagor hereby authorizes the Depository, in the event all or any portion of the Repair Escrow is other than in cash, to draw against the letter of credit to the extent necessary to provide the cash necessary to make the disbursements directed by HUD.~~

Subject to Section 7 hereof
**{DELETE FOREGOING CLAUSE IF
NO COST CERT IS REQUIRED},**
provided that the Loan is not
then in default, any funds
remaining in the Repair Escrow
after the completion of the
Repairs may be released at the
direction of HUD when: (i) all
Repairs have been completed to
the satisfaction of HUD, (ii) a
supplemental cost certification
has been submitted to and
approved by HUD, if required by
**Escrow Agreement for
Non-critical, Deferred
Repairs**

**U.S. Department of Housing
and Urban Development**
Office of Healthcare Programs

OMB Approval No. 9999-9999
(exp. mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 0.5 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. No confidentiality is assured.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

This ESCROW AGREEMENT FOR NON-CRITICAL, DEFERRED REPAIRS

(Agreement) made this _____ day of _____, 20____, by and between _____, **(Lender)**, whose principal address is _____, and _____, **(Borrower)**, whose principal address is _____, [and if applicable, _____ **(Depository Institution)**], whose principal address is _____,

_____], in connection with HUD Project No. _____, located in the City/County of _____, State of _____, which Project [has been, is being, or will be] [rehabilitated, purchased or refinanced] from the proceeds of a Loan insured by HUD and made by Lender. (The definition of any capitalized term or word used herein can be found in this Escrow Agreement for Non-critical, Deferred Repairs, the Regulatory Agreement between Borrower and HUD, the Note, and/or the Security Instrument, except that the term **Program Obligations** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site)).

RECITALS:

A. HUD has issued a Firm Commitment to insure said Loan pursuant to § _____ of the National Housing Act, as amended, and Program Obligations, on which mortgage insurance Borrower is relying for financing of the Project.

B. The Firm Commitment is conditioned upon assurance that funds in the amount of \$ _____ be available for the completion of non-critical repairs and/or borrower elective repairs deferred until after endorsement of the Note (**Escrow**), including all amounts identified in sections 1, 2 and 3 of this Agreement.

C. The non-critical and/or borrower elective repairs, deferred repair cost estimate and list of repairs itemized in Exhibit "A" (**Repair Work**) are attached to and made part of this Escrow Agreement for Non-critical, Deferred Repairs.

D. As used herein, **Completion Date** means the date that is _____ () months following endorsement of the Note by HUD for mortgage insurance.

AGREEMENTS:

In consideration of the mutual promises and undertakings contained herein, and for the purpose of inducing the Lender to make and HUD to insure said Loan, the parties acknowledge and agree as follows:

1. Cash in the amount of \$ _____, equal to one hundred percent (100%) of the estimated cost of the Repair Work, has been withheld by Lender from the proceeds of the Loan, or deposited by Borrower with Lender or subject to the control and order of Lender with a depository institution satisfactory to Lender in accordance with Program Obligations, and is hereby included in the Escrow (**Repair Estimate Amount**). A letter of credit may not be substituted for this amount.

2. An additional cash amount of \$ _____, consisting of not less than twenty percent (20%) [_____ {insert different percentage if permitted by Program Obligations}] of the estimated cost of the Repair Work, has been deposited by Borrower with Lender or subject to the control and order of Lender with a depository institution satisfactory to Lender in accordance with Program Obligations, and is hereby included in the Escrow (**Additional Deposit Amount**), in the form of [specify as applicable]:

☐ cash, and/or

☐ one or more unconditional irrevocable letter(s) of credit issued to Lender by another banking institution, attached hereto as Exhibit "B". The rating of the issuing banking institution and the duration of such letter(s) of credit shall comply with Program Obligations. The letter(s) of credit is attached for informational purposes only. It is expressly agreed and understood that HUD assumes no responsibility for reviewing the letter(s) of credit for sufficiency or enforceability.

3. In the event of a cash out refinancing under § 223(f) of the National Housing Act, a further additional cash amount of \$ _____, equal to fifty percent (50%) of the cash out proceeds, has been withheld by Lender from the proceeds of the Loan, and is hereby included in the Escrow (**Cash Out Proceeds Amount**). **This paragraph only applies to 207/223f's.**

4. Borrower shall complete the Repair Work, free of all liens, on or before the Completion Date. Borrower shall remedy or cause to be remedied, to the satisfaction of HUD, all defects in the Repair Work due to faulty materials or workmanship, defective materials, or damage to the Project resulting from such defects, which defects or damage become apparent within twelve (12) months from completion of the Repair Work (**Latent Defects**).

5. Subject to the prior written approval of HUD, Lender may release funds from the Escrow for completed work pursuant to the estimated amounts set forth in Exhibit "A" Repair Work.

6. With the exception of those amounts expended by Lender pursuant to Paragraph 7 of this Agreement, any and all disbursements from the Escrow shall be made only upon prior written authorization by HUD, using a form prescribed by HUD, to meet any established cost for which the Escrow was intended.

~~(e) — 7. If Borrower has not completed all the Repair Work by the Completion Date, Lender will have the right, subject to HUD [DELETE (ii) IF NO COST CERT IS REQUIRED], (iii) evidence of clear title has been provided that the Repairs and the Project are free and clear of all liens, and (iv) the latent defects assurance required pursuant to paragraph 4 hereof has been provided.~~

~~4. Upon completion of the Repairs, the Mortgagor warrants that all Repairs shall be free of defects in workmanship and material and shall be of a workmanlike character for a period of at least twelve (12) months following the date of completion of all Repairs. In accordance with HUD procedures, assurance against latent defects will be provided in the form of:~~

~~(a) An escrow in cash or an irrevocable letter of credit (at the option of the Mortgagee) equal to 2 1/2 percent of the cost of the Repairs, which escrow shall be maintained for fifteen (15) months from the date of completion of the Repairs to cover situations where the defect is discovered within twelve (12) months after completion and additional time is necessary to correct; or~~

~~(b) A surety bond covered by FHA Form 3259 from a surety on the accredited list of the U.S. Treasury for at least 10 percent of the cost of the Repairs running for a period of two (2) years from the date of completion of the Repairs.~~

5. ~~In the event the Mortgagor (a) fails to complete all Repairs on or before the date which is _____ (_____) months after Endorsement, or (b) defaults under the Loan, the Depository, upon an assignment of the Loan to HUD or receiving written instructions from HUD so to do, shall pay to the Mortgagee the unexpended balance of the sum herewith deposited to be applied to the obligations of the Mortgagor.~~

~~In the event the Mortgagor fails approval, to complete the Repairs to the satisfaction of HUD on or before the date which is _____ (_____) months after Endorsement, the Mortgagee, subject to the approval of HUD, shall have the right and/or option to proceed to complete said work and pay Repair Work, and to pay the cost thereof, including all costs and charges a reasonable fee of the Depository and Mortgagee Lender, from the sum herewith deposited, and for Escrow. For this purpose ~~the Mortgagor hereby, Borrower~~ irrevocably authorizes and empowers the Mortgagee appoints Lender as its attorney-in-fact, with full power of substitution, to do and perform for the Mortgagor and Borrower in its Borrower's name, place and stead, with full powers of substitution, all matters and things which the said Mortgagee Lender shall in its judgment deem necessary and proper to be done to effectuate the completion of the Repairs Repair Work, and to apply the moneys herewith amount deposited under the Escrow to the payment of debts contracted or incurred for work done or for materials furnished thereof, or either, in and about said work and for all, expenses, costs and charges of any kind contracted or incurred in connection therewith, and this warrant of attorney shall be the Mortgagee's full and sufficient authority, and the . The orders given and signed by the Mortgagee Lender as attorney-in-fact for Borrower shall be good and sufficient vouchers for all payments made by virtue thereof. In this connection, this power of attorney shall provide Lender with full and sufficient authority to enter into and upon the Project and take charge thereof, together with all materials and, appliances thereunto belonging, and in the name of the Mortgagor, as its attorney-in-fact, Fixtures and other improvements and to call upon and require the several contractors for work to be done and for materials to be furnished in and about the completion of the Repairs to proceed to complete the Repairs as may be deemed expedient or necessary by the Mortgagee and to do whatsoever in the Mortgagee's judgment shall be necessary to be done to secure the completion of the Repairs. In the event the work is completed by the Mortgagee in accordance with the provisions hereof and written approval of said work is given by HUD, subject to Paragraph 3(c) hereof, any unexpended balance of the sum deposited with the Depository shall thereupon be returned to the Mortgagor without interest unless the Loan is in default. The Mortgagee to complete the Repair Work. Except for intentional misconduct or gross negligence on the part of Lender, Borrower shall in no event be responsible for the completion of the Repairs indemnify, hold harmless and defend Lender from and against claims of third parties arising from Lender's performance under this paragraph. Lender shall have the right to obtain any property and/or liability insurance coverage which Lender shall in its judgment deem necessary or appropriate in connection with Lender's performance under this paragraph. Subject to written HUD approval, Lender may extend the Completion Date. Lender will not be responsible for performance of the Repair Work beyond the expenditure of the sum herewith deposited amount available from the Escrow, and if said sum that amount is insufficient for such purpose the Mortgagee shall, Lender will be under no obligation to proceed further with the work or to demand or obtain additional sums from the Mortgagor. This warrant of attorney is The power~~

granted herein is coupled with full power of substitution an interest, and ~~the Mortgagor hereby specifically~~Borrower acknowledges and agrees that all powers granted herein to the Mortgagee hereunderLender may be assigned ~~by the Mortgagee~~ to HUD.

6. ~~In the event the actual cost of the Repairs is less than _____ and _____/100 Dollars (\$- _____), **[[100% amount]]** and supplemental cost certification is required, the Loan amount will be recalculated by HUD. In the event HUD determines that a reduction of the Loan amount is required, the Mortgagor must either prepay the Loan by the amount of the reduction or deposit such amount into the Project's reserve for replacements, as determined by HUD. **[DELETE THIS SECTION IF NO COST CERT IS REQUIRED]**~~

7. ~~The Repair Escrow will be subject to immediate application to the Loan in the event of default under the Mortgage Note or the Mortgage.~~

Depository8. Subject to Paragraph 7 of this Agreement, provided that an Event of Default does not then exist,

(a) any balance remaining in the Escrow that is attributable to the Additional Deposit Amount, the Cash Out Proceeds Amount, and any portion of the Repair Estimate Amount funded by Borrower separate from Loan proceeds, may be released to Borrower when: (i) all Repair Work has been satisfactorily completed, as determined by HUD, (ii) evidence of clear title has been provided to HUD, and (iii) Latent Defects assurances that are compliant with Program Obligations have been provided in the form of a cash escrow, irrevocable letter of credit, or a surety bond from a surety on the accredited list of the U.S. Treasury, in an amount equal to two and one-half percent (2 ½ %) of the Repair Estimate Amount (**Latent Defects Deposit**), which shall be held as part of the Escrow. Said sums may be used for the correction of Latent Defects in the event Borrower fails to make such corrections; and

(b) any balance remaining on account of the Latent Defects Deposit shall be released to Borrower, upon the latter of (i) fifteen (15) months from the completion of the Repair Work, or (ii) at such time as the Latent Defects have been corrected to the satisfaction of HUD.

9. In cases where the actual cost of the Repair Work is less than estimated, any resulting excess funds in the Escrow attributable to the Repair Estimate Amount that were funded from Loan proceeds may be used for the following purpose(s): (a) to pay for additional repairs approved by Lender and HUD, the funds for which shall continue to be subject to this Agreement, in addition to further cost certification if Program Obligations so require; (b) to reduce the outstanding Loan balance; or (c) to deposit in the Reserve for Replacement.

10. The Escrow, when in the form of cash, shall be held by Lender or a depository institution satisfactory to the Lender and in accordance with Program Obligations.

Lender may, at any time, for any reason ~~or no reason~~, draw upon any letter of credit included in the ~~Repair~~ Escrow and convert the same to cash, which cash shall then be held and disbursed ~~as part of the Repair Escrow~~ pursuant to the terms of this Agreement. Fees charged by Lender and any interest earned on the Escrow shall be governed by Program Obligations.

~~8. This Agreement is entered into by the parties hereto for the benefit of the Mortgagee and HUD, either of which shall have the right to act as Depository and/or enforce the provisions hereof.~~

11. The Escrow may, at HUD's direction, be subject to immediate application to the Indebtedness if an Event of Default by Borrower occurs at any time.

Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

IN WITNESS WHEREOF, the parties ~~hereto have hereunto caused these presents to be duly executed on their behalf~~ this Escrow Agreement for Non-critical, Deferred Repairs as of the day and year first above written.

MORTGAGOR:

By:_____

BORROWER:_____ **LENDER:**_____

By:_____ **By:**_____

Print Name:_____ and Title:_____ Print
Name and Title

MORTGAGEE/DEPOSITORY INSTITUTION:

a(n)_____

By:_____

By

Print Name:_____ and Title:_____

Attachment: Exhibit "A"
Exhibit "B"

Warning:

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

EXHIBIT "A"

Repair Work

EXHIBIT "B"

Form of Letter of Credit